

Maximilian Steinbeis Sa 21 Okt 2017

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2017

Dear Friends of Verfassungsblog,

I am exhausted and also a bit ill after this week of craziness, so please bear with me if this editorial is less elaborate than the last ones. Week of craziness? Catalonia, Austria, a new government forming in Germany – there is certainly more than enough going on to keep a Verfassungsblogger busy these days. For me personally, the most momentous event of this week was the appearance of our book "[Mit Rechten reden](#)" (Talking with Rightists/making use of the right to speak) which coincided with the clash between the far-right and leftist activists at the Frankfurt Book Fair – an event which could be mistaken for an intentional staging of our book's central thesis, and which turned our book into the "probably most discussed book of the fair", as the [Süddeutsche Zeitung](#) generously wrote.

What happened? Far-right publisher Götz Kubitschek had booked a stage to present a few of his far-right books on the last day of the fair. On one side appeared a bunch of left-wing protesters equipped with posters and whistles and eager to rain on Kubitschek's parade; on the other side a bunch of right-wing protesters were already lying in wait for them, and within minutes the busy hushed murmur of the book fair turned into a scene of riot and tumult, police lining up, the fair hall reverberating with angry chants and abuse, the hapless fair chairman waving a dysfunctional megaphone about and being pushed off his own stage by the gleefully enraged Mr. Kubitschek who probably couldn't believe his own luck: He wanted a stage, and what he got was a stadium! He, the small-time, ostracized fringe publisher, was the talk of all the high-and-mighty German cultural punditry all of a sudden, the guy in the spotlight, the biggest scorer of the prime event of attention economy capitalism, the king pin of the Frankfurt Book Fair! And what's best (for him): He didn't even have to substantiate with a single sentence that his books were any good at all.

The right provokes and awaits and expects the left's protest because she has learnt to capitalize on it. That is the central thesis of our book. Here, I just want to add two quick thoughts about freedom of expression.

Freedom of expression on the part of the right, that would be my first point, obliges the left to nothing. That goes without saying in a US constitutional context, but within the German constitutional culture of *Werteordnung* (order of values) that fact is often neglected. Freedom of expression obliges the police, the judiciary, the legislator, but not some ordinary people who stand up and make use of their own freedom of expression, no matter how clamorous. Not only doesn't it oblige the left, it entitles it. The Antifa has a right to do what she does (unless that is violence) and to out-yell the rightist claim for public attention. She can do that. And there are a lot of situations in which I would go even further and say: She *should* do that. Frankfurt, for obvious strategic reasons, was not one of them, though.

++++++A Note from EURAC++++++

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And the rightists? Doesn't the protection of their freedom of expression end where Nazism begins? Well, no. Not even in Germany. Even the most despicable opinion falls within the protection of Art. 5 of the *Grundgesetz* (only the glorification of the historical Third Reich, as an exception that confirms the rule, is punishable as an opinion *per se* under § 130 para. 4 StGB, constitutionally [rubberstamped by the FCC](#)). That doesn't mean that you can say all those things with impunity, of course. If you say something you don't just say something, you also *do* something. If you, by saying something, harm someone else, you have to take responsibility for that. That is not liberal hypocrite villainy but actually quite trivial. And what goes even more without saying: No-one has to accept what you say just because you say it. That is what most rightists seem to find so infinitely difficult to comprehend: that they are in no position to determine for everyone else what is and what should be. Not nature, not authority, not life – only justification can make others accept your statement as binding for themselves. Unless you count force. Therefore: *Mit Rechten reden*.

The right likes to assert herself as the perpetually victimized: by foreigners, by women, by gays and blacks and jews, by liberals and leftists and cosmopolitans and globalists, all keeping them from being who they really are. By this very assertion they provoke indignation on the part of the blamed. The more outrage they provoke the easier it gets for them to claim: Look, there you have it, see how they hate us, see how they want to come after us. To justify provocation by the defense of the provoked: the classical schoolyard bully strategy. The right feeds parasitically on the indignation of her proclaimed enemies. And, what's more, she thereby evades the necessity of actually giving reasons to back her alleged victimization up in the first place.

We have tried to analyze this *Sprachspiel* in our book. Quite a few leftists have taken offense by that. I understand that, but I don't think it is justified. What we offer is a critique of the left's strategy so far – the left should be able to deal with criticism – but it is also a proposal how to expand their strategic arsenal. In view of the success achieved by the right-wing schoolyard bullies inside and outside the Frankfurt Book Fair, she should welcome any help she can get. After all, when it comes to checking the rightist advance, we are on the same side.

Ex oriente lux?

In **Austria**, the rightists have attained a position of hegemony that their German counterparts, for the time being, can only dream of, as could be seen in the election results of the last weekend. ALEXANDER SOMEK, the legal philosopher from Vienna, has written down his thoughts on the election result [here](#). THEO ÖHLINGER analyses the constitutional possibilities for Federal President Alexander van der Bellen to influence the formation of the government.

Meanwhile, the **Catalan** train with its freight of explosives keeps charging ahead at full speed towards the wall of concrete in Madrid. All readers who wish to express their alarm on the disaster we have to expect are called upon to put their signature under the well-phrased call for dialogue formulated by [ZORAN OKLOPCIC](#) and a number of other high-profile constitutionalists.

+++++++A Note from ICON-S+++++++

Announcement of First International Society for Public Law (ICON-S) Book Prize

(ICON-S Annual Meeting of June 2018 in Hong Kong)

The International Society for Public Law (ICON-S) is pleased to announce the launch of the International Society for Public Law Book Prize. In line with the Society's mission, the prize will be awarded to an outstanding book in the field of public law, understood as a field of knowledge that transcends dichotomies between the national and the international as well as between Constitutional Law and Administrative Law. Preference will be given to scholarship which, in dealing with the challenges of public life and governance, combines elements from all of the above with a good dose of political theory and social science.

The nomination process is open now! [More...](#)

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In **Italy**, the wheel of regional separatism will be put into ever more frantic motion on Sunday with referenda in the northern Italian regions of Lombardy and Veneto, where the Northern League would like to bolster up its political position by a popular vote for more autonomy and less solidarity with poorer regions. [SOFIA FRANCESCUTTO](#) and [MARIO RICCIARDI](#) explain what these referenda are all about and what their political consequences could be.

In **Poland**, the governing PiS party keeps squeezing the air out of the rule of law, and the EU Commission time and again finds itself unable to decide to take action against it. [TOMASZ KONCEWICZ](#) is losing patience.

In the **UK**, Brexiteers are looking forward to the moment when Britain will regain control of immigration, maybe unaware of the fact that this will be the moment when they notice that they get the exact opposite. If [DANIEL THYM](#) is right, it is not more, but a lot less control they will have without the buffer of the EU asylum regime.

Speaking of migration: In [MEIKE RIEBAU's](#) opinion, the **German** Federal Constitutional Court has missed an opportunity to clarify the considerable constitutional doubts against the exclusion of family reunification for persons entitled to subsidiary protection (in German).

[TOBIAS KLARMANN](#) takes a closer look at the issue of the deportation of "dangerous persons", i. e. people from the Islamic spectrum who have not committed any crimes for the time being but are considered likely to do so (in German).

The German Federal Criminal Police Office (BKA) has publicly searched for a child-abuse criminal with the photo of his 4-year-old victim, and successfully so. [SABINE WITTING](#) examines why turning to the public in such a manner is nevertheless highly problematic from the perspective of victim protection (in German).

Elsewhere

No lack of highly noteworthy thoughts on the issue of Catalonia this week: [P.Y. LO](#) discusses the special status of Hong Kong in the People's Republic of China as a possible model for Spain. [MICHELE DELLA MORTE](#) reflects on the Catalan drama before the backdrop of the dwindling power of law. [MIGUEL ANGEL PRESNO LINERA](#) asks himself, in the face of demands from the *Partido Popular* to forbid independentist parties in Catalonia, if they are kidding. [XAVIER ARBÓS](#) sees little room for manoeuvre for the Spanish central government to achieve a new election in Catalonia on the basis of the infamous Art. 155 of the Spanish Constitution.

RÉNATA UITZ' long version of her Verfassungsblog report last week on the Lex CEU in Hungary is [here](#).

[MARK ELLIOTT](#) shows how little the sovereign British parliament could do against a "No Deal Brexit": such attempts would be little more than "the legislative equivalent to the instructions issued by King Canute to the incoming tide".

The ECHR's judgement on the pushback of refugees in the Spanish exclave of Melilla, on which Dana Schmalz [reported two weeks ago](#), has sparked a broad debate in which [DAVID MOYA](#), [ANNICK PIJNENBURG](#), [ROSELINE LETTERON](#), [CRISTINA GORTAZAR ROTACHE](#) and [NURIA FERRÉ TRAD](#) take part.

Now, this editorial has turned out to be every bit as lengthy as all the others before in the end, but I guess that's just the way it is in these exciting times. I'm going to make myself a cup of tea now and try to catch some of those last autumn sunbeams out there. I wish you and myself a nice, successful and perhaps, for a change, not overly exciting week!

All best, and take care,

Max Steinbeis

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